In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-98

L. & A. CREATIVE ARTS STUDIO, INC., ET AL., PETITIONERS

v.

THE REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA AND THE DEPARTMENT OF H.U.D., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

Petitioners allege that they are entitled to compensation under the Uniform Relocations Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 *et seq.*, although the property involved was condemned prior to the effective date of that Act; they further contend that the courts below erred in refusing to enjoin federal funding of a local redevelopment project until the compensation is paid.

Petitioners' complaints allege that they are tenants in a building condemned by the Redevelopment Authority of the City of Philadelphia (RDA) by a dec-

laration of taking filed in July 1968 (App. A, *infra*, 6; App. B, *infra*, 11). They seek "to prevent HUD and its officials and RDA and its members and officials from engaging in any activities with respect to the East Callowhill Redevelopment Area and programs in the City of Philadelphia, pursuant to Loan and Grant Contracts or otherwise" (App. A, 7; App. B, 11–12) because of RDA's alleged failure to comply with Sections 301 and 302 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651, 4652). The complaints were dismissed by the district court (Pet. Apps. B, D),[1] on several grounds: that Sections 301 and 302 of the Act do not apply to real estate acquisitions which occurred before January 2, 1971, the Act's effective date; that, in any event, no cause of action is stated; and that injunctive relief was not an appropriate remedy. The court of appeals affirmed in each case, relying on the district court opinion in *Will-Tex Plastics Manufacturing, Inc.* (Pet. Apps. A, C).

Section 301(3) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act provides that "Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor * * * [and] shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation" (42

[1] The court in *L & A Creative Arts Studio* relied on the opinion in *Will-Tex Plastics Manufacturing, Inc.*

U.S.C. 4651(3)). Section 302 provides that if the agency acquires any interest in real property, it shall acquire at least an equal interest in all improvements which must be removed or adversely affected as a result of the use of the real property (42 U.S.C. 4652). Finally, Section 305 prohibits federal approval of any state program involving federal financial assistance for the acquisition of real property after January 2, 1971, in the absence of adequate assurances that the state agency will comply with the policies and provisions of Sections 301 and 302 (42 U.S.C. 4655).

Petitioners assert that they are entitled to a statement of just compensation, payment for machinery installed on the premises, and a reduction in rent under the above provisions, even though they allege in their complaints that the condemnation occurred a year and a half before January 2, 1971, the effective date of the Act. They argue that the Act applies since they were not displaced from the premises until April 1971, relying on other provisions of the Act providing for "displaced persons." But Sections 301 and 302, insofar as they apply to federally assisted property acquisitions of the sort involved in the instant case, reach only programs which will result in the state acquisition of real property after January 2, 1971 (Sec. 305, 42 U.S.C. 4655).

In any event, petitioners' complaints fail to state a ground upon which relief can be granted. The district court correctly noted (Pet. App. D33–34) that Section 301 (42 U.S.C. 4651) confers no judicially enforceable rights (Section 102, 42 U.S.C. 4602). In addition, peti-

tioners have not alleged facts which would entitle them to relief under Section 302 (42 U.S.C. 4652), even if the acquisition had occurred after January 2, 1971 (Pet. App. D35–36).[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1973.

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[2] The reference in Pet. App. D36 to Section 302(6) should apparently be to Section 301(6).

APPENDIX A

II. Complaint

1. L & A Creative Art Studio, Inc. (hereinafter referred to as "L & A"), is a Corporation with its principal place of business located at 408–16 North 3rd Street, Philadelphia, Pennsylvania, and conducting its business thereat.

2. L & A occupies a multi-story building at the above location. It designs, manufactures, displays and sells advertising, decorations, commercial art work and assessories.

3. Defendant, Department of Housing and Urban Development (hereinafter referred to as "HUD"), is the department of the Federal Government responsible under the housing and urban renewal statutes for determining whether and under what terms to provide financial assistance to local public agencies for housing and urban renewal projects; Defendant, George M. Romney, is Secretary of the Department of Housing and Urban Development; Defendant, Norman Watson, is Assistant Secretary for Renewal and Housing Management of the Department; Defendant, Theodore Robb, is the Administrator of Region II of the Department, whose jurisdiction includes the City of Philadelphia, Defendant, Douglas E. Clafin, is Defendant Robb's Acting Assistant Regional Administrator for Renewal Assistance, and Defendant, William F. Paterson, is Defendant Robb's Administrator for the Philadelphia metropolitan area. Each of the foregoing Defendants has statutory or administrative responsibilities in connection with the consideration and

applications for federal loans, grants, contracts, programs and other funding, for housing and urban renewal projects under Section 1451 et seq. of Title 42 United States Code, and each personally or by representatives or predecessors exercised such responsibilities in connection with HUD's approval of the project that is the subject of this action.

4. Defendant, Redevelopment Authority of the City of Philadelphia (hereinafter referred to as "RDA"), is the local public agency and contractor which will expend federal funds under a loan and grant or contract with HUD; Defendants, F. Bruce Baldwin, Mrs. Samuel Bellet, Robert H. Gray, John J.McCreesh, Jr., and Paul M. Lawson, are members of the RDA, and Defendant, Francis J. Myers, Jr., is the Director of RDA.

5. Jurisdiction over the foregoing claims is based upon 28 U.S.C., § 1331(a).

6. By Declaration of Taking filed in the Court of Common Pleas of Philadelphia County in July of 1968, and Docketed in that Court as of July Term, 1968, No. 2535, the RDA condemned the premises of L & A under its redevelopment area known as Callowhill East Urban Renewal Area.

7. Thereafter on August 5, 1971, L & A and RDA entered into a Stipulation of Settlement for all elements of damage under the Eminent Domain Code of Pennsylvania duly executed by its respective attorneys.

8. L & A made demand for payment under the terms of said settlement but RDA without any reason therefor has refused and continues to refuse to make payment in accordance with the terms of the settlement.

9. RDA has ordered L & A to immediately vacate its premises and in accordance with the usual procedures of RDA, L & A has submitted moving estimates

to accomplish its move to a new location. RDA has refused to accept the low bid for moving submitted by L & A and has obtained a further bid from a moving concern that was lower than those that were submitted by L & A, but which mover is not acceptable to L & A. L & A has agreed to accept as immediate compensation the amount of the low estimate obtained by RDA in order to accomplish an immediate move as required by RDA, but it reserves its right to claim further compensation from RDA in order to complete the said move which condition RDA has refused and continues to refuse.

10. This action is to prevent HUD and its officials and RDA and its members and officials from engaging in any activities with respect to the Callowhill East Urban Renewal Area in the City of Philadelphia, pursuant to Loan and Grant Contracts or otherwise, because:

(a) HUD's grant loan or other funding to RDA is unlawful because RDA has failed to comply with Section 301(3) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, January 2, 1971, 84 Stat. 1894, in that RDA has failed to complete its settlement with L & A and has failed to pay L & A just and reasonable moving expenses.

(b) HUD's grant, loan or other funding to RDA is unlawful because RDA has failed to comply with Section 302 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, January 2, 1971, 84 Stat. 1894, in that rental charges set by RDA and demanded by it from L & A are exorbitantly higher than short term fair rental charges in this locale.

11. L & A has advised HUD as the funding arm of the federal government in this federally assisted proj-

ect of the aforementioned exorbitant rent charged by RDA of L & A and has requested advice as to whether HUD has promulgated any regulations or created any procedures for processing administratively complaints against RDA with respect to rental charges and if it had, what further steps were to be taken to perfect that complaint. This request dated October 26, 1971, remained unanswered and L & A presumes that HUD has no procedures for and will not entertain the complaint of L & A as set forth therein.

12. L & A cannot continue its business at its present location; has not been paid in accordance with the terms of a Stipulation of Settlement with RDA; has not been paid for the moving estimates; has not been paid that sum of money it will require to complete its move to a new location and has been and will be required to pay rental charges that are unfair and unreasonable to RDA unless this Court affords appropriate relief and will sustain substantial, permanent and irreparable harm and injury unless HUD takes steps to require RDA and RDA is required to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

Wherefore, Plaintiff prays:

(a) that this Court preliminarily and permanently enjoin RDA and HUD from committing any money or engaging in any further activity with regard to the Callowhill East Urban Renewal Area Program in and for the City of Philadelphia until RDA and HUD comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, by requiring RDA to pay to L & A compensation for damages as a result of the condemnation of its property in accordance with the Stipulation of Settlement dated August 5, 1971; by requiring HUD and RDA to comply with the aforementioned Act by paying fair and

reasonable moving charges immediately and by restraining RDA from making any claim or demand for unreasonable rental charges and to reimburse L & A for any such charges that have been made by it.

(b) such other and further relief as may be just and equitable under the circumstances.

KATES, LIVESEY & EDELSTEIN,
By LEWIS KATES,
JOSEPH R. LIVESEY,
Attorneys for Plaintiff.

APPENDIX B

II. Complaint

1. Will-Tex Plastics Manufacturing, Inc. (hereinafter referred to as "Will-Tex"), is a Pennsylvania corporation conducting an industrial and manufacturing business and operation at 414–16 North 3rd Street, Philadelphia, Pennsylvania. Will-Tex is the successor to Charles Willner, i/t/a Will-Tex Plastics and is the assignee of all the rights and interests of Will-Tex Plastics.

2. Defendant, Department of Housing and Urban Development (hereinafter referred to as "HUD"), is the department of the Federal Government responsible under the housing and urban renewal statutes for determining whether and under what terms to provide financial assistance to local public agencies for housing and urban renewal projects; Defendant, George M. Romney, is Secretary of the Department of Housing and Urban Development; Defendant, Norman Watson, is Acting Assistant Secretary for Renewal and Housing Management of the Department; Defendant, Theodore Robb, is the Administrator of Region II of the Department, whose jurisdiction includes the City of Philadelphia; Defendant, Douglas E. Clafin, is Defendant Robb's Acting Assistant Regional Administrator for Renewal Assistance, and Defendant, William F. Paterson, is Defendant Robb's Administrator for the Philadelphia metropolitan area. Each of the foregoing Defendants has statutory or administrative responsibilities in connection with the consideration and applications for federal loans, grants, contracts, pro-

grams and other funding for housing and urban renewal projects under Section 1451 et seq. of Title 42 United States Code, and each personally or by representatives or predecessors exercised such responsibilities in connection with HUD's approval of the project that is the subject of this action.

3. Defendant, Redevelopment Authority of the City of Philadelphia (hereinafter referred to as "RDA"), is the local public agency and contractor which will expend federal funds under a loan and grant or contract with HUD; Defendants, F. Bruce Baldwin, Mrs. Samuel Bellet, Robert H. Gray, John J. McCreesh, Jr., and Paul M. Lawson, are members of the RDA, and Defendant, Francis J. Myers, Jr., is the Director of RDA.

4. Jurisdiction over the foregoing claims is based upon 28 U.S.C., § 1331(a).

5. By Declaration of Taking filed in the Court of Common Pleas of Philadelphia County and docketed as of the July Term, 1968, No. 2535, RDA sought to condemn for its East Callowhill Redevelopment Area pursuant to its Urban Renewal Plan therefore. Said Urban Renewal Plan required the partial demolition and total rebuilding of premises 414–16 North 3rd Street, with displacement of Will-Tex and the other occupants of said premises or, in the alternative, to demolish entirely the said premises.

6. RDA did not prior thereto or at the time of said condemnation or at any time thereafter offer to Plaintiff proper estimate of just compensation, although it has not disputed that the fair market value of Plaintiff's machinery and equipment which as a unit cannot be disassembled, moved and reinstalled reasonably is $74,736.00.

7. This action is to prevent HUD and its officials and RDA and its members and officials from engaging

in any activities with respect to the East Callowhill Redevelopment Area and programs in the City of Philadelphia, pursuant to Loan and Grant Contracts or otherwise, because:

(a) HUD's grant, loan, or other funding to RDA is unlawful because RDA has failed to comply with Section 301(3) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91–646, January 2, 1971, 84 Stat. 1894, in that RDA has not provided Will-Tex with a written statement of and summary of the basis for the amount established by RDA as just compensation.

(b) HUD's grant, loan, or other funding to RDA is unlawful because RDA has failed to comply with Section 302 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91–646, January 2, 1971, 84 Stat. 1894, in that RDA has not offered to Will-Tex any sum for its improvements and machinery and equipment installed in its premises, to wit, 414–16 North 3rd Street, Philadelphia, Pennsylvania.

(c) HUD's grant, loan, or other funding to RDA is unlawful because RDA has failed to comply with Section 301 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91–646, January 2, 1971, 84 Stat. 1894, in that RDA has refused to adjust the rent charges it levied upon Will-Tex to reflect the fact that it terminated Will-Tex's occupancy under its written lease and permitted it to remain solely upon a month to month basis.

8. Will-Tex has made formal request upon RDA that it provide Will-Tex with a written statement of and summary for the basis of the amount established by RDA as just compensation but RDA has failed and refused so to do.

9. Will-Tex has made formal request upon RDA for it to comply with Sections 301 and 302 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, with regard to its rent charges as aforesaid and with regard to offering to Will-Tex its estimated just compensation for Will-Tex's improvements and machinery and equipment in its said premises, but RDA has failed and refused so to do.

10. Upon the failures and refusals of RDA as aforesaid, Will-Tex advised HUD of the same and requested the advice of HUD as the funding arm of the Federal Government for this federally assisted project if it has promulgated regulations creating procedures for processing administratively complaints against RDA and if it had, what further steps should be taken with regard to Will-Tex's complaints, as aforesaid. Will-Tex advised HUD that unless it was informed to the contrary it would presume that HUD had no such procedures and would not process administratively its complaints against RDA. No definitive action was taken by HUD.

11. Will-Tex has been given notice to vacate by RDA and by reason thereof was compelled to discontinue substantially its business activities at its present location. It cannot economically remove its machinery and equipment and it has been unable to find a relocation site. RDA has refused to make payment of just compensation or to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as aforesaid.

Wherefore, Plaintiffs pray:

(a) that this Court permanently enjoin RDA and HUD from committing any money or engaging in any further activity with regard to RDA's redevelopment programs in and for the City of Philadelphia until RDA and HUD comply with the Uniform Relocation

Assistance and Real Property Acquisition Policies Act of 1970, and unless and until RDA and/or HUD offers just compensation to Plaintiff for its machinery and equipment and provides Plaintiff with a written statement of and summary of the basis for the amount offered by RDA as just compensation therefor.

(b) such other and further relief as may be just and equitable under the circumstances.

KATES, LIVESEY & EDELSTEIN,
By LEWIS KATES,
JOSEPH R. LIVESEY,
Attorneys for Plaintiff.